IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 735 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made the,2,3,4,5 : NO

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5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

BHOJA SHAMLA RAJPUT

Appearance:

1. Criminal Appeal No. 735 of 1988

MR ND GOHIL, ADDL.PUBLIC PROSECUTOR for Petitioner No. 1

MR CHINTAN ABICHANDANI for MR KB ANANDJIWALA for Respondent No. 1,2 3,4,5

MR MEHUL S SHAH for Respondent No. 1,2,3,4,5

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 03/08/2001

ORAL JUDGEMENT

Regarding the incident which alleged to have taken place way back on 5.4.1984 i.e. more than 17 years from today, as many as 15 accused were charged for the offence under Sections 143, 147, 148, 149, 426, 452, 326, 323 and 324 IPC and Section 135 of Bombay Police Act. By

a judgement and order dated 11.5.1988, learned JMFC, Rapar acquitted all the respondents accused. Aggrieved by that order of acquittal, the State has preferred this appeal against all the 15 respondent accused. When this appeal has come up for admission before learned Single Judge of this Court on 15.11.1990, leave was refused against respondents accused Nos. 6 to 15. Therefore, the appeal against them stands dismissed in 1998 itself. However, the learned Single Judge granted leave and admited appeal against the respondents accused Nos. 1 to 5.

For acquitting the respondents accused, the learned Magistrate has given cogent reasons. Having carefully gone through the judgement and order of acquittal passed by the learned Magistrate, it clearly appears that the prosecution has deliberately not examined important witnesses and the witnesses which were examined as eye witnesses were chance witnesses. When the statement in form of dying declaration of injured Devji was recorded, he was specifically asked who caused the injury, but at that time he did not give the names of the accused. It also appears that there is no material contradiction in the evidence of the complainant and other witnesses. Considering all these aspects, if the learned Magistrate has acquitted the accused and when more particularly at the admission stage of the appeal itself if the learned Single Judge was not satisfied and therefore refused to grant leave and dismissed the appeal against the respondents accused Nos. 6 to 15, then after lapse of such a long period of more than 17 years, this Court would not interfere with such order of acquittal. Hence this appeal fails and is dismissed against respondents accused Nos. 1 to 5 also.

(B.J.Shethna, J.)

*/Mohandas